

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE
DIVISION I

STATE OF TENNESSEE

V.

PERRY A. MARCH

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No: 2004-D-3113

ORDER

This cause came to be heard on September 22, 2005, upon the motion of the defendant to set a bond in this cause. The defendant is charged in 2004-D-3113 with Second Degree Murder, a Class A felony which is a violation of Tenn. Code Ann. §39-13-210, Abuse of a Corpse, a Class E felony which is a violation of Tenn. Code Ann. §39-17-312 and Tampering with Evidence, a Class C felony which is a violation of Tenn. Code Ann. §39-16-503. At the hearing the Court heard proof from Mickey Miller, Ron March, Laura Chastain, Regina Friedman, C.J. Gideon, Samuel Chavez, and Pat Postiglione. Following the hearing, the Court took the matter under advisement and has consolidated its findings into this written memorandum. Based upon the proof offered and the applicable statutory authorities, the Court is of the opinion that the bond shall be set at three million dollars (\$3,000,000).¹

The Court heard testimony from Mickey Miller, a police captain with the Metropolitan Nashville Police Department, that he had been involved in this case several years ago but had no involvement since 2003. At the time of the alleged victim's disappearance in 1996, the defendant cooperated with police and gave a statement, but after becoming a suspect, has repeatedly refused to allow the police to talk to his son or cooperate further with the investigation. Captain Miller testified that, during the course of the investigation, the police received several tips to possible sightings of the alleged victim, Janet March. Captain Miller testified that each tip that he was involved in was ruled out as being credible and in most all "sightings" a person was located and determined not to be Janet March.

Ron March, the defendant's brother, testified that he believed his brother would stay in

¹The bond in case 99-B-1290 has previously been set at two hundred fifty thousand dollars (\$250,000) and no request has been made to alternate the amount of bond in that case.

Nashville in the event bond was made. Ron March testified that he would help his brother financially by obtaining a residence for him and helping provide certain necessities. Mr. March further testified that the defendant left Nashville to live in Chicago in 1996 because of the media coverage on the case and the effect it was having on the children. Mr. March further testified that he represented the defendant in a custody case in Illinois and a contempt order was entered when the defendant did not appear for court and left for Mexico. Mr. March further testified that the defendant has relatives in Illinois, Israel, Mexico and that the defendant went to school in Singapore. Mr. March further testified that the defendant has mentioned that he has bank accounts in Belize. Mr. March further testified that the defendant possibly forged his name on documents filed with the Probate Court in Davidson County and that he has been held in contempt in that court as well.

Laura Chastain, who is deputy chief disciplinary counsel with the Board of Professional Responsibility testified that the defendant had two complaints filed against him resulting in the defendant being disbarred for failure to respond to the allegations. According to Ms. Chastain, the Supreme Court of Tennessee in adopting the findings by the Hearing Committee found evidence to support the disbarment. Ms. Chastain further testified that she received a letter from the defendant asserting his displeasure with the process using demeaning language toward her and the Court.

Regina Friedman, an attorney in Chicago, testified that she was appointed to be the guardian ad litem for the defendant's children in a grandparent visitation case in Chicago. Ms. Friedman testified that the defendant told her by verbal and written communication that he would not comply with an order granting visitation to his wife's parents and could "disappear with his kids in Singapore or Mexico" and the kids would never be seen again. She further testified that a contempt order was issued because the defendant left for Mexico and failed to appear in court with the children. Ms. Friedman testified that the defendant's son told another guardian ad litem involved in the visitation case that the night before his mother disappeared, he heard his parents fighting and the next morning he observed a rug rolled up and that afternoon it was gone.

C.J. Gideon, an attorney in Nashville, testified that he has been involved in the civil proceedings concerning the victim and defendant. Mr. Gideon testified that the defendant has been held in contempt on five (5) occasions, has an outstanding attachment order, and has submitted forged documents to the

court. In addition, Mr. Gideon testified that the defendant has an outstanding civil judgment against him in the amount of six million dollars (\$6,000,000).

Samuel Chavez, a former business associate of the defendant's in Mexico testified that the defendant would travel to Belize and that the defendant had an Israeli passport. Mr. Chavez said the defendant did disappear from Mexico during times he (the defendant) indicated he was going to Israel. Mr. Chavez further testified that after he would not falsify documents for the defendant, the defendant told him "If you report me I will kill you the way I killed my wife." Mr. Chavez testified that he believes the defendant was the one who tried to have him killed when he was shot in May of 2000.

Pat Postiglione, a sergeant with the Metro Nashville Police Department, testified that he is assigned to the cold case unit and that he escorted the defendant from California to Nashville after the defendant's arrest in Mexico. Sgt. Postiglione further testified that the defendant was interested in knowing the facts of the case and if anyone else was indicted. Sgt. Postiglione further testified that the defendant offered to make a deal and that he would plead guilty and take between five (5) and seven (7) years in jail in order to get this behind him. Sgt. Postiglione also testified that the defendant indicated that he had not been involved in any criminal activity prior to the 1996 incident with Janet March.

The Court must first state that it is not here to opine on the merit of any pending action against the defendant. The sole issue before the Court is what amount of bond is appropriate in order to assure the defendant's appearance at all subsequent court dates weighed against protecting the safety of the public.² In deciding this issue, the Court must adhere to Tenn. Code Ann. § 40-11-118 which states in pertinent part that "bail shall be set as low as the Court determines is necessary to reasonably assure the appearance of the defendant as required". Among the factors this Court can consider are the following:

- (1) The defendant's length of residence in the community;
- (2) The defendant's employment status and history and the defendant's financial condition;
- (3) The defendant's family ties and relationships;
- (4) The defendant's reputation, character and mental condition;
- (5) The defendant's prior criminal record and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings;
- (6) The nature of the offense and the apparent probability of conviction and

²The defendant is entitled to a bond being set pursuant to Tenn. Code Ann. §40-11-102 since this is not a capital case.

the likely sentence;

(7) The defendant's prior criminal record and the likelihood that because of such record the defendant will pose a risk of danger to the community;

(8) The identity of responsible members of the community who will vouch for the defendant's reliability; however, no such member of the community may vouch for more than two (2) defendants at any time while charges are still pending or a forfeiture is outstanding; and

(9) Any other factors indicating the defendant's ties to the community or bearing on the risk of the defendant's willful failure to appear.

Tenn. Code Ann. §40-11-118(b).

To revisit the testimony at the hearing as mentioned above, the court has heard no proof as to the length of the defendant's prior residency in this jurisdiction, but it is apparent that the defendant has not resided in this jurisdiction within the last nine (9) years. There has been no proof of any employment options currently available to the defendant within the court's jurisdiction. The defendant has been disbarred from the practice of law. There has been absolutely no proof of the defendant's current financial condition and thus the Court can not factor into its decision the defendant's ability or lack thereof to post bond. The defendant's family ties are to other states and countries. As to the defendant's reputation and character, his attitude towards previous courts in which he has been involved is addressed later in this order, but speak against the defendant in this regard. The defendant's lack of criminal record weighs in favor of the defendant. However, his record of appearances in court is lacking. Multiple contempt of court findings, testified to by Mr. C.J. Gideon and uncontradicted by the defendant, do not evidence a good track record with the courts. The testimony of Ms. Friedman indicates the defendant's willingness to remove himself from judicial process during the pendency of court proceedings. The nature of the offense and the apparent probability of conviction and the likely sentence are discussed elsewhere within this order. As to prior criminal record and because of that record the risk of danger to the community, this factor is favorable to the defendant due to his lack of a prior record. No persons testified from within this community to vouch for the defendant's reliability. The only other factor indicating ties to this community presented at the hearing was proof that the defendant's two (2) minor children reside here, but are currently not in the defendant's custody. Further, testimony indicated that the defendant had mentioned previously his potential ability to secrete himself and the two children to parts unknown.


The Court heard proof that the defendant has displayed a blatant attitude of disregard toward

the courts and its orders. This is evidenced by the numerous times he has been held in contempt and from the language of the letter he sent to the Board of Professional Responsibility. The Court also gives substantial weight to the potential flight risk of the defendant. The Court heard proof that the defendant has contacts with not only other jurisdictions, i.e. Chicago, but other countries, i.e. Mexico, Israel, Balise and possibly China. Ms. Friedman testified that the defendant made the comment to her that you "could get lost in Singapore" as well as making threats towards her. The defendant did not put on any proof to contradict these contacts or statements. As to the apparent probability of conviction and the likely sentence, the Court's only mention of evidence offered for purposes of this factor is toward the issue of the amount of bond. Obviously a jury can make the ultimate determination of the entire proof from both sides during the trial of this cause. If accepted by the jury, there is evidence of admissions or statements against his interest made by the defendant. At this stage, the Court pursuant to Tenn Code Ann. §40-11-118(b) is required to assess the evidence submitted at the bond hearing for purposes of amount of bond only.

The Court has set bond in numerous other murder cases but none wherein the defendant has the elevated number of contacts with other countries and the prior history of unwillingness to adhere to orders of courts. As stated earlier, the purpose for bond is to assure the appearance of the defendant at trial and yet protect the safety of the public. See Tenn. Code Ann. §40-11-118(b). The Court has given each factor enumerated in Tenn. Code Ann. §40-11-118 consideration and weighed these factors against protecting the safety of the public which is required by statute. The defendant is obviously presumed innocent of the charges against him and the ultimate determination of his guilt or innocence will be determined by a jury after all relevant evidence from both sides is presented. The Court at this time must set bond to "reasonably assure" that the defendant is present at that jury trial. In order to accomplish this objective, the Court hereby sets a bond of three million dollars (\$3,000,000) to be secured by at least three (3) different bonding companies. If bond is made, the court will impose the following conditions: (1) the defendant is to surrender any passport to the clerk; (2) have no contact with any potential witnesses listed on the indictment; (3) not leave Davidson County and (4) be overseen by electronic monitoring thru GPS capabilities. If bond is able to be made, the case will be set

for a source hearing pursuant to Tenn. Code Ann. §39-11-715.³

Entered this 22th day of September 2005.


Steve R. Dozier, Judge
Criminal Court, Division I

cc: Tom Thurman
William Massey
John Herbison

³This hearing is mandated by law and local rules of court in order to determine the source of any funds to post bond and whether those funds could be subject to seizure to satisfy other judgments presently outstanding against the defendant.